

REMARKS

In the Office Action mailed June 18, 2004 the Examiner noted that claims 1-40 were pending, allowed claims 6-37, objected to claim 5 and rejected claims 1-4 and 38-40. Claims 1 and 38 have been amended, and, thus, in view of the forgoing claims 1-40 remain pending for reconsideration which is requested. No new matter has been added. The Examiner's rejections and objections are traversed below.

On page 2 the Examiner objected to claims 39 and 40 as allegedly being substantial duplicates of claims 2 and 3 respectively. Claims 2 and 3 are means plus function type claims and claims 39 and 40 are not. By statute means plus function claims are interpreted differently than non-means plus function claims. As stated in the statute:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim **shall be construed** to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

(See 35 USC section 112, para. 6, **bold** emphasis added)

The courts have held that claims that do not use the "means for" language are not considered means plus function claims under 35 USC section 112, paragraph 6 (see York Products Inc. v. Central Tractor Farm & Family Center, 40 USPQ2d 1619, 1623 (Fed. Cir. 1996).

As a result, the corresponding claims are not substantial duplicates. For this reason, it is requested that the objection be withdrawn.

On page 3 of the Office Action, the Examiner rejected claims 1-4 and 6-40 under 35 U.S.C. § 102 as anticipated by Floeder. On page 4 the Examiner objected to claim 5 and indicated that claim 5 would be allowable if rewritten into independent form. Independent claims 1 and 38 have been amended to include the features of claim 5 indicated as being allowable. Claim 5 has been cancelled.

With respect to claims 2, 3, 39 and 40, the Examiner pointed to particular portions of Floeder as allegedly teaching the determination of a background or a plotting area. This text of Floeder specifically states:

FIG. 6 is a diagram of the pixel region used in the preferred algorithm of the present invention.

FIG. 7 is a table illustrating the 16 possible pixel regions used in processing image data in the preferred algorithm of the present invention.

(See Floeder, col. 4, lines 14-20)

The image memory 60 is used to store data from the CCD image sensor 24 and is used to detect the number of distinct objects on the surface of the substrate 26 using the preferred algorithm described below. The RS-232 serial interface 62 is used to provide communication between the present invention and a computer or other electronic device. As shown in FIG. 1, the counter 10 is preferably connected to a computer 32 via the RS-232 interface to allow transfer of data between the computer and the counter 10.

FIG. 5 is a flowchart showing operation of the preferred embodiment of the present invention which includes a cassette to automatically feed substrates into the counter 10. It will be understood by those skilled in the art that features of this flowchart would not be applicable to a counter designed to scan individually-fed substrates.

(See Floeder, col. 6, lines 1-15)

As noted in the text of Floeder set forth above, Floeder counts objects. To do so Floeder converts the gray level image into a black/white image and then processes the image with their preferred counting algorithm. The conversion to black/white is done before the counting or object detection algorithm is executed (see col. 7, lines 53-64, particularly lines 63 and 64). That is the counting in Floeder works with a black/white image. This is in contrast to the present invention where the background/plotting area determination occurs with the gray scale image (see "converting the gray scale image to a binary image by determining whether each pixel corresponds to a background area or a plotting area and producing binary values in which each pixel has a value representing either a background area or a plotting area in the gray scale image" - claim 39). Claims 2, 3 and 40 emphasize similar aspects of the present invention. It is submitted that the present claimed invention patentably distinguishes over the prior art and withdrawal of the rejection is requested.

Claim 4 depends on allowable claim 1.

It is submitted that the claims satisfy the requirements of 35 U.S.C. section 112. It is also submitted that claims 6-37 continue to be allowable. It is further submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

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If any further fees, other than and except for the issue fee, are necessary with respect to this paper, the U.S.P.T.O. is requested to obtain the same from deposit account number 19-3935.

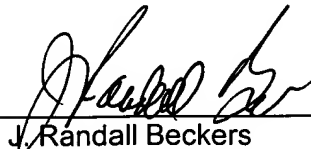
Respectfully submitted,

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